IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition NO. 554 (ss) of 2004

Madan Singh,
S/o Deo Singh,
Working as Chaukidar in Guest House,
Forest Department Bageshwar. .....Petitioner.

Versus

1. Chief Conservator of Forest Kumaun Division, Nainital.
2. District Forest Officer, Bageshwar.
3. Van Khshetradhikari Bageshwar Van Kshetra.

.....Respondents.

Sri S.S. Yadav, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 02.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of Mandamus directing the respondents to give pensionery benefits like pension, gratuity and other post retiral benefits of the petitioner.

2. Brief facts giving rise to the present writ petition are that the petitioner was appointed in the year, 1962 on the post of Chaukidar in Guest House Forest Department Bageshwar. The petitioner did extra work as was given by the department form time to time except his work as Chaukidar of Guest House Bageshwar.

3. Learned counsel for the petitioner has submitted that State of Uttaranchal enhanced the age of retirement of the government employee from 58 years and fixed 60 years and in this respect a G.O. was issued on 15.06.2002.

4. Petitioner has submitted that respondent no. 3 knowingly and deliberately ignored said G.O. and orally stated that as the petitioner has completed 58 years of age so he will be tried in the month of September, 2002 and the services of the petitioner were suspended for five months (September, 2002 to January, 2003), thereafter the petitioner was again reinstated in the service on 06.03.2003.

5. Petitioner has submitted that he was regularly working in the said department but his service was not regularized even though the rules for regularization of Group D post has already been formulated by the Forest Department.

6. Being aggrieved by the aforesaid act of the respondents, the petitioner approached the Hon'ble Court and vide order dated 21.02.2002 of the Hon'ble Court, the service of the petitioner was regularized on 27.01.2004.

7. The petitioner retired from service vide order dated 30.01.2004 after completion of 60 years which was communicated to the petitioner same day.

8. The petitioner has submitted that the respondents are depriving the petitioner for his post retiral benefits, which is the fundamental right of the petitioner.

9. The petitioner has submitted that he is illegally being deprived of his pensionery benefits and in this respect, he has made a representation dated 16.03.2004 before the authorities praying for the payment of his due fund and other post retiral benefits and to pay him pension according to rules and regulations, but the same has not yet been decided.

11. The petitioner has also referred the judgment of *Haryana Vs. Pyara Singh, AIR 1992 SC 2130*. The relevant observation is quoted below:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as

far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job."

13. In view of the aforesaid facts, the writ petition is allowed. The respondents are directed to pass appropriate orders regarding the retiral benefits payable to the petitioner, the amount due, if any, shall be released forthwith within a period of six weeks from the date of presentation of the certified copy of the order.

14. No order as to costs.

(Rajesh Tandon, J.

02.03.2006
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